

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application of: Jacobs et al.  
Serial No: 10/582,315  
Filing Date: June 8, 2006  
Title: Combination Vaccine for Poultry  
Confirmation No: 1596  
Group Art Unit: 1645  
Examiner: Dr. Rodney P. Schwartz  
Attorney Ref: 2003.025 US

February 23, 2010

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT**

**Mail Stop: PETITIONS**

Commissioner of Patents  
P.O. Box 1450  
Alexandria, VA 22313

Sir/Madam:

Applicants request reconsideration of the patent term adjustment indicated in the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) that accompanied the Notice of Allowance dated February 17, 2010. Applicants have determined that the patent term adjustment should be 1078 days, rather than the 629 days indicated.

The Commissioner is hereby authorized to debit the fee under 37 C.F.R. 1.18(e) to Deposit Account number 19-0365.

Applicants' determination is detailed in Appendix A, the AIPA Term Calculation Report, submitted herewith. The credits and debits with respect to the patent term adjustment are summarized as follows:

USSN: 10/582,315  
Attorney Docket: 2003.025 US  
Request for reconsideration of Patent Term Adjustment

Credits:

3-Year PTO Issue of Patent (Wyeth et al. v. Dudas, ___F.3d___(Fed. Cir. 2101))	
[06/08/2006 to 08/31/2010]	449 days
14-month PTO First Action	
[06/08/2006 to 04/28/2009]	629 <u>days</u>
Total	1078 days

Debits: 0 days

Credits less Debits equal 1078 days.

Applicants respectfully request that the patent term adjustment be recalculated and the full term adjustment of 1078 days be applied to the patent that is to issue.

Applicants do not believe that any other fee is due in connection with this filing. If, however, Applicants do owe any such fee(s), the Commissioner is hereby authorized to charge the fee(s) to Deposit Account No.19-0365. In addition, if there is ever any other fee deficiency or overpayment under 37 C.F.R. §1.16 or 1.17 in connection with this patent application, the Commissioner is hereby authorized to charge such deficiency or overpayment to Deposit Account No. 19-0365.

Respectfully submitted,  
/William M. BLACKSTONE/ Registration No. 29,772  
William M. Blackstone, Registration No.29,772  
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Patent Dept. K-6-1, 1990  
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# APPENDIX “A”

## AIPA Term Calculation Report

APPLICATION INFORMATION			
Docket Number:	I-2003.025 US	User Name:	Blackstone, William
Application Number:	10/582,315	Firm/Company Name:	Schering-Plough
Filing Date:	12/21/2004	User Comments:	
Title/Inventor(s):	COMBINATION VACCINE FOR POULTRY; Antonius Arnoldus Christiaan Jacobs, Kessel, (NL)		Calculation Generated: 02/19/2010 03:04:07 PM ET

AIPA TERM CALCULATION SUMMARY	
Earliest Referenced Application under 35 USC § 120, 121, or 365(c):	12 / 21 / 2004
International Filing Date:	12 / 21 / 2004
Net Adjustment Credits:	1078 Days
Net Adjustment Debits:	0 Days
Patent Term Adjustment:	1078 Days
AIPA Patent Term End Date:	12 / 04 / 2027 (1)

(1) Assumes payment of all maintenance fees, no intervening acts, and no 35 USC 156 regulatory extensions. Terminal disclaimer(s) filed in this case, if any, may result in an earlier term end date. Without adjustment, the term would end on 12/21/2024.

COMPARISON TO USPTO PAIR PTA TAB (2) (Based on PAIR Data from 02/19/2010)			
	PAIR PTA Tab	Your Calculation	Comparison
Credit Days (USPTO Delay):	-	1078	x
Debit Days (Applicant Delay):	-	0	x
Total Patent Term Adjustment Days:	629	1078	x

(2) Comparison is shown for USPTO Delay, Applicant Delay, and Total Patent Term Adjustment fields displayed on USPTO PAIR Patent Term Adjustments (PTA) tab on 02/19/2010. See the full PAIR PTA tab, file wrapper (e.g., Notice of Allowance, PTA-related petitions), and issued patent for complete information on USPTO-calculated PTA.



06/08/2006 National Stage Commenced under 35 USC 371(b) or (f)	<p align="center"><b>3-Year PTO Issue of Patent</b></p> <p>PTO must issue a patent within 3 years (not including exclusions) after the date on which the application was filed under 35 USC 111(a) or the national stage commenced under 35 USC 371(b) or (f) in an international application. Period of adjustment (credits) begins on the day after the date that is 3 years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 USC 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the listed exclusionary periods. 35 USC 154(b)(1)(B); 37 CFR 1.702(b), 1.703(b).</p> <p>You have elected to analyze this rule in accordance with Wyeth v. Kappos, ___ F.3d ___ (Fed. Cir. 2010).</p>	Issue Date: 08/31/2010 Issue Date		449
06/08/2006 Application Fulfilled Requirements of 35 USC 371	<p align="center"><b>14-Month PTO First Action</b></p> <p>PTO must mail a notification under 35 USC 132 or a notice of allowance under 35 USC 151 not later than 14 months after the date on which the application was filed under 35 USC 111(a) or fulfilled the requirements of 35 USC 371 in an international application. Period of adjustment (credits) begins on the day after the date that is 14 months after the date on which the application was filed under 35 USC 111(a) or fulfilled the requirements of 35 USC 371 and ending on the date of mailing of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(i); 37 CFR 1.702(a)(1), 1.703(a)(1).</p>	First PTO Action: 04/28/2009 Non-final Action		629
04/28/2009 Non-final Action	<p align="center"><b>3-Month Applicant Response to Notice or Action</b></p> <p>Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(ii); 37 CFR 1.704(b).</p> <p>Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c).</p> <p>You have indicated that no 1.705(c) Showing of Due Care was made.</p>	Applicant Response: 07/24/2009 Reply after Non-final Action under 37 CFR 1.111	0	

D	07/24/2009 Reply after Non-final Action under 37 CFR 1.111	<b>4-Month PTO Response to Applicant Reply</b>  PTO must respond to a reply under 35 USC 132 not later than 4 months after the date on which the reply was filed. The period of adjustment (credits) begins on the day after the date that is 4 months after the date a reply under 37 CFR 1.111 or in compliance with 37 CFR 1.113(c) was filed and ending on the mailing date of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(ii); 37 CFR 1.702(a)(2), 1.703(a)(2),(3).	<i>PTO Response:</i> 11/23/2009 Final Rejection			0
E	11/23/2009 Final Rejection	<b>3-Month Applicant Response to Notice or Action</b>  Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(ii); 37 CFR 1.704(b).  Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c).  You have indicated that no 1.705(c) Showing of Due Care was made.	<i>Applicant Response:</i> 01/25/2010 Amendment after Final		0	
F	01/25/2010 Amendment after Final	<b>4-Month PTO Response to Applicant Reply</b>  PTO must respond to a reply under 35 USC 132 not later than 4 months after the date on which the reply was filed. The period of adjustment (credits) begins on the day after the date that is 4 months after the date a reply under 37 CFR 1.111 or in compliance with 37 CFR 1.113(c) was filed and ending on the mailing date of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(ii); 37 CFR 1.702(a)(2), 1.703(a)(2),(3).	<i>PTO Response:</i> 02/17/2010 Notice of Allowance under 35 USC 151			0
G	02/17/2010 Notice of Allowance under 35 USC 151	<b>3-Month Applicant Response to Notice or Action</b>  Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(ii); 37 CFR 1.704(b).  Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c).  You have indicated that no 1.705(c) Showing of Due Care was made.	<i>Applicant Response:</i> 05/17/2010 Issue Fee Payment under 35 USC 151		0	

4-Month PTO Issue of Patent			
II	05/17/2010 Issue Fee Payment under 35 USC 151	PTO must issue a patent not later than 4 months after the date on which the issue fee was paid under 35 USC 151 and all outstanding requirements were satisfied. The period of adjustment (credits) begins on the day after the date that is 4 months after the date the issue fee was paid and all outstanding requirements were satisfied and ends on the day the patent issues. 35 USC 154(b)(1)(A)(iv); 37 CFR 1.702(a)(4), 1.703(a)(6).	Issue Date: 08/31/2010 Issue Date
Total Exclusion, Debit, and Credit Days:		0	1078
Overlap Days (7) :		0	0
Net Exclusion, Debit, and Credit Days:		0	1078
Patent Term Adjustment Days (8) :			1078
<p>(3) Calculations of Debit, Credit, and Exclusion Days are determined by the rule assignments, assignments of related events, and analysis options in the Apply Term Rules tab. The patent professional using this system is responsible for reviewing and updating the Apply Term Rules tab to ensure all data is complete, correct, and consistent with their judgment and interpretation of applicable legal authority.</p> <p>(4) Exclusion Days are periods which are not included in determining the end of the 3-year period after the date on which the application was filed under 35 USC 111(a), or the national stage commenced under 35 USC 371(b) or (f) in an international application, used to determine credits under the 3-Year PTO Issue of Patent rule. See 35 USC 154(b)(1)(B)(i)-(iii); 37 CFR 1.702(b)(1)-(5), 1.703(b)(1)-(4).</p> <p>(5) Debit Days are days where grounds for reduction of period of adjustment of patent term exist. See, e.g., 37 CFR 1.704. Debit Days are sometimes referred to as Applicant Delay.</p> <p>(6) Credit Days are days where grounds for adjustment of patent term exist. See, e.g., 37 CFR 1.702, 1.703. Credit Days are sometimes referred to as USPTO Delay.</p> <p>(7) To the extent credit periods overlap other credit periods, debit periods overlap other debit periods, or exclusion periods overlap other exclusion periods, overlaps are subtracted so that each calendar day generates at most one credit day, one debit day, and one exclusion day.</p> <p>(8) Patent Term Adjustment Days equals Net Credit Days minus Net Debit Days, but is not less than zero.</p>			